

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WADE SNYDER,)	
)	
Plaintiff,)	3:08-CV-00628-LRH-RAM
)	
v.)	
)	<u>ORDER</u>
LIFE CARE CENTERS OF AMERICA, INC.,)	
)	
Defendant.)	

Before the court are Defendant Life Care Centers of America's Notice of Removal (#1¹) and Statement Concerning Removal (#2). It is unclear from these documents whether the requisite amount in controversy exists to confer subject matter jurisdiction on this court. Defendant is therefore granted leave to present evidence in order to establish that this action involves the requisite amount in controversy.

"[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). The district courts of the United States have original jurisdiction of civil actions when the suit is between citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds \$75,000. 28 U.S.C. § 1332(a). Section 1332(a) also

¹Refers to the court's docket

1 provides the statutory basis for federal courts' subject-matter jurisdiction over suits between
2 citizens of different states. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 513 (2006).

3 "If . . . it appears that the district court lacks subject matter jurisdiction, the case shall be
4 remanded." 28 U.S.C. § 1447(c). "Federal jurisdiction must be rejected if there is any doubt as to
5 the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)
6 (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). Moreover, the
7 removal statute is construed restrictively and in favor of remanding a case to state court. *See*
8 *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus*, 980 F.2d at 566.

9 After a defendant files a petition for removal, the court must determine whether federal
10 jurisdiction exists, even if no objection is made to removal. *See Rains v. Criterion Systems, Inc.*,
11 80 F.3d 339, 342 (9th Cir. 1996). The defendant always has the burden of establishing that
12 removal is proper. *Gaus*, 980 F.2d at 566. Normally this burden is satisfied if the plaintiff claims a
13 sum greater than the jurisdictional requirement. *Id.*

14 However, if the plaintiff does not claim a sum greater than the jurisdiction requirement, the
15 defendant cannot meet its burden by merely alleging that the amount in controversy is met:

16 The authority which the statute vests in the court to enforce the limitations of its
17 jurisdiction precludes the idea that jurisdiction may be maintained by mere averment or
18 that the party asserting jurisdiction may be relieved of his burden by any formal
19 procedure. If his allegations of jurisdictional facts are challenged by his adversary in any
20 appropriate manner, he must support them by competent proof. And where they are not
so challenged the court may still insist that the jurisdictional facts be established or the
case be dismissed, and for that purpose the court may demand that the party alleging
jurisdiction justify his allegations by a preponderance of evidence.

21 *Id.* (quoting *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)) (emphasis
22 omitted). This preponderance-of-the-evidence analysis encompasses whether it is "'facially
23 apparent' from the complaint that the jurisdictional amount is in controversy." *See Singer v. State*
24 *Farm Mut. Auto. Ins.*, 116 F.3d 373, 377 (9th Cir. 1997) (delineating the "appropriate procedure for
25 determining the amount in controversy on removal" as described in *Allen v. R & H Oil & Gas Co.*,
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1 63 F.3d 1326 (5th Cir. 1995)). “When the amount is not facially apparent from the complaint, the
2 court may consider facts in the removal petition and may require parties to submit summary-
3 judgment-type evidence relevant to the amount in controversy at the time of removal.” *Kroske v.*
4 *U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2006) (internal quotation marks omitted).

5 After review of the complaint and Defendant’s petition for removal, the court requires more
6 evidence to determine whether it has subject matter jurisdiction over this case. Jurisdiction will
7 only exist if Defendant can present “summary-judgment-type evidence” to establish by a
8 preponderance of the evidence that this case meets § 1332(a)’s amount in controversy requirement.
9 Consequently, Defendant has twenty days to present evidence to establish that the matter in
10 controversy exceeds \$75,000. Plaintiff is granted ten days to respond. No reply is required.

11 IT IS THEREFORE ORDERED that Defendant is granted 20 days to establish the
12 minimum amount in controversy for federal jurisdiction. Plaintiff is granted 10 days to file an
13 opposition. No reply is required.

14 IT IS SO ORDERED.

15 DATED this 6th day of March, 2009.



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18 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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